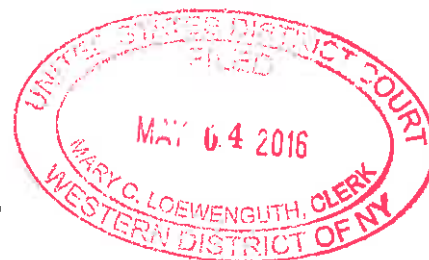


16 CV 6286 W

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORKFORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

All material filed in this Court is now available via the **INTERNET**. See **Pro Se Privacy Notice** for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: **NOTE:** *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. Nyjee L. Boyd #1582063

2. _____

-VS-

B. Full Name(s) of Defendant(s) **NOTE:** *Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. Deputy Vincent Petrulis

4. Captain Kennedy

2. Deputy Adam Geiger

5. Carpal Lopez

3. Major Harris

6. Sergeant Latencia

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION **NOTE:** *To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Nyjee L. Boyd

Present Place of Confinement & Address: _____

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

Name of Defendant: Kennedy

Official Position of Defendant: Captain of Monroe County Jail

Defendant is sued in x individual and/or x official Capacity

Address of Defendant: 130 S. Plymouth Ave Rochester, NY 14614 Monroe County Jail

Name of Defendant: Lopez

Official Position of Defendant: Corpal of Monroe County Jail

Defendant is sued in x individual and/or x official Capacity

Address of Defendant: 130 S. Plymouth Ave Rochester, NY 14614 Monroe County Jail

Name of Defendant: LITONA

Official Position of Defendant: Sergeant of Monroe County Jail

Defendant is sued in x individual and/or x official Capacity

Address of Defendant: 130 S. Plymouth Ave Rochester, NY 14614 Monroe County Jail

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No X

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

FIRST CLAIM: (DATE OF THE INCIDENT) 5/19/15 DEFENDANT
 (GIVE THE NAME AND POSITION HELD BY EACH DEFENDANT INVOLVED IN
 THIS INCIDENT) MAJOR. HORAN, CAPTAIN. KENNEDY, DEPUTY. GEIGER,
 DEPUTY. PETRALIS, SERGEANT. LATCHA, CORPAL. LOPEZ

DID THE FOLLOWING TO ME (BRIEFLY STATE WHAT EACH DEFENDANT
 NAMED ABOVE DID): I WROTE MAJOR. HORAN AND CAPTAIN. KENNEDY
 AN INTERNAL COMMUNICATION FORM AROUND THE MONTH OF APRIL/MAY,
 2015 PRIOR TO THE INCIDENT ON 5/19/15 I THEN SENT THE FORM
 WHERE IT STATED THAT I WAS BEING THREATENED AND
 CONSTANTLY HARASSED BY DEPUTY. GEIGER AND DEPUTY. PETRALIS
 I ALSO STATED IN THE INTERNAL COMMUNICATION THAT I
 DIDNT FEEL SAFE WHERE I WAS HOUSED AND REQUESTED
 ON SEVERAL OCCASSIONS TO BE MOVED TO ANOTHER FLOOR, IN
 FEAR OF RETALEATION. NOT ONLY DID I WRITE INTERNAL
 COMMUNICATIONS STATING THIS, I ALSO WROTE SEVERAL
 GRIEVANCES AS WELL, WITHIN THE MONTH OF APRIL/MAY 2015
 NONE OF WHICH WAS EVER RESPONDED TO ON MAY 19 year 2015
 AT APPROX. 4:30 PM I WAS HOUSED ON 4M C5 AND UPON THIS
 TIME I WITNESSED DEPUTY. GEIGER BRING THE TRAYS IN ON A
 CART FROM THE OUTSIDE HALLWAY INTO THE CORRIDOR SECTION
 BETWEEN THE BLOCKS OF 4M WEST LOW AND 4M WEST HIGH MY
 TRAY CAME IN A STYRO WRAP, BEING THAT I REQUESTED
 SUCH ORDER WITH KITCHEN BECAUSE DEPUTY. GEIGER WAS SPITTING IN MY
 TRAYS ON NUMEROUS OCCASSIONS. I SAW MY PARTICULAR TRAY ON THE FOOD CART
 THE TRAYS COME ON I WAS THE ONLY ONE ON THAT FLOOR WHO RECIEVED STYRO WRAP
 TRAYS, SO AS I WITNESSED DEPUTY. GEIGER GRAB MY TRAY I IMMEDIATLY OBSERVED
 DEPUTY. GEIGER OUT THE WINDOW OF MY BOX DOOR WINDOW UNWRAP MY STYRO
 AND SPIT INSIDE AND CLOSED IT BACK AND REWRAPPED IT. DEPUTY. GEIGER
 THEN PROCEEDED TO WALK TOWARDS MY BOX WITH DEPUTY. PETRALIS.
 ONCE INFRONT OF MY CELL/BOX DEPUTY. GEIGER OPENED MY FLAP BOX, ONCE
 THE FLAP WAS OPENED I RESTED MY LEFT ARM ON TOP OF THE FLAP AND
 REQUESTED TO SPEAK TO A CORPAL WHICH I VERBALLY EXPLAINED TO
 DEPUTY GEIGER I WITNESSED HIM SPIT IN MY TRAY AND I ASKED TO
 TALK TO A FLOOR A FLOOR CORPAL. HE THEN SHOVED THE TRAY OVER MY
 LEFT ARM INTO MY BOX GRABBED A HOLD OF MY LEFT ARM BENDING IT
 ON THE FLAP AND REPEATEDLY PUNCHED MY ARM WITH HIS FREE FIST,
 THIS WENT ON FOR ABOUT 30 SECONDS THEN WHILE HOLDING MY ARM
 DEPUTY GEIGER GRABBED HIS PEPPER SPRAY OFF HIS WHIST BELT AND HE
 PLACED IT TO MY FACE AND SPRAYED A LIQUID OUT IN MY FACE & EYES
 WHICH IMMEDIATLY STARTED TO BURN EXSPECIALLY MY EYES, I FELL
 TO THE FLOOR AFTER I WAS SPRAYED.

I CRAWLED TO THE BACK OF MY CELL AND I HEARD MY TALKIE GO OFF AND THEN I HEARD KEYS OPENING THE BOX DOOR. ONCE THE CELL DOOR WAS OPENED I SAW DEPUTY. GEIGER WALKING INTO MY CELL WITH DEPUTY. PETRALIS BEHIND HIM, I STOOD TO MY FEET AND PLACED MY HANDS BEHIND MY BACK THATS WHEN DEPUTY. GEIGER STRUCK ME IN MY NOSE WITH HIS RIGHT FIST AND CONTINUED TO STRIKE ME REPEATEDLY IN THE FACE AND BODY I PUT MY HEAD DOWN IN A ATTEMPT TO GET INFRONT OF A CELL BLOCK TO GET ON CAMERA TO SEIZE THE ASSUALT, AS I MADE THEN STARTED PUSHING TOWARDS THE DOOR IN A ATTEMPT TO GET INFRONT OF A CELL BLOCK TO GET ON CAMERA TO SEIZE THE ASSUALT AS I MADE IT TO THE DOOR OF MY BOX I WAS PLACED IN A REVERSE CHOKE HOLD FROM THE FRONT BY DEPUTY. PETRALIS WHILE HE BEGAN TO STRIKE MY SIDE WITH HIS FREE FIST, I KEPT PUSHING IN A ATTEMPT TO GET ON CAMERA AND I MADE IT ONTO THE 4M WESTLOW AND 4M WEST HIGH HALLWAY DEPUTY. GEIGER REALIZED I WAS ATTEMPTING TO GET ONTO THE CAMERA AND IMMEDIATLY GRABBED HIS WALKIE/TALKIE AND SAID CODE-1 STAFF INVOLVED HE THEN PROCEEDED AND CONTINUED TO STRIKE ME IN MY BACK AND SIDES I THEN I COLLAPSED INFRONT ON 4M WEST HIGH FRONT GATE WHILE STILL IN THE CHOKEHOLD BY DEPUTY. PETRALIS, RESPONNING STAFF ARRIVED AND BEGAN TO ALSO INDULGE IN THE ASSUALT BY PEPPER SPRAYING ME AND ALSO KICKING/PUNCHING ME IN MY BODY AFTHER A COUPLE MORE ATTEMPTS TO FREE MYSELF FROM THE CHOKE HOLD OF DEPUTY. PETRALIS I MANAGED TO SLIP LOOSE AND IMMEDIATLY PLACED MY HANDS BEHIND MY BACK I WAS CUFFED BY STAFF ONCE CUFFED STAFF STARTED KICKING AND PUNCHING ME AGAIN FOR APPROX. 2 MINUTES. I WAS THEN ASSISTED TO MY FEET I WAS TAKEN TO A HOLDING CELL TO WASH THE PEPPER SPRAY OUT MY EYES PICTURES WAS TAKEN OF ME AFTHERWARDS. THEN I WAS TAKEN TO MEDICAL AREA IN BOOKING AND WAS SEEN BY A NURSE FOR THE INJURYS I SUSTAINED THE INJURIES INCLUDED MY SHOULDER, LIP, TEETH, BACK, HEAD, EYES PHOTOS WERE TAKEN AGAIN OF THE SIDE OF MY BODY AND BACK ALSO OF MY FACE AND TOOTH. A COUPLE OF DAYS LATER I FILED A GRIEVANCE OF THE ASSUALT AND SUCH COMPLAINT WAS NOT RESPONDED BACK TO, I WROTE GRIEVANCES EXPLAINING THAT MY GRIEVANCES WENT UNANSWERED AND ALSO INTERNAL AFFAIRS OF THE INCIDENT THAT TRANSPIRED AND THOSE AS WELL WENT UNANSWERED.

A. FIRST CLAIM: On (date of the incident) _____,
 defendant (give the name and position held of each defendant involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment Excessive force,
Failure to protect, failure to supervise

The relief I am seeking for this claim is (briefly state the relief sought): \$1,000,000 Compensatory
damages and punitive damages

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? X Yes _____ No If yes, what was the result? Faculty official
never responded back to my grievances

Did you appeal that decision? _____ Yes X No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: when I filed my grievances
and I appealed it I never got a response.

A. SECOND CLAIM: On (date of the incident) April/May 2015,
 defendant (give the name and position held of each defendant involved in this incident) major Horan

did the following to me (briefly state what each defendant named above did): I wrote several complaints before the incident took place on May 19, 2015 to Major Moran advising him I was being harassed and threatened by Deputy Adam Geary and that I feared for my life and requested to be relocated to another housing location due to the threats and harassment. My complaints were ignored which resulted in my assault upon me ~~by~~ on May 19, 2015.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment, Failure to protect

The relief I am seeking for this claim is (briefly state the relief sought): \$250,000 Compensatory damages and punitive damages

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? _____ Yes X No If yes, what was the result? _____

Did you appeal that decision? _____ Yes X No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: Because I was a Detainee

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

1st claim sought: \$1,000,000 Second claim sought: \$250,000 Third claim sought: \$250,000
Fourth claim sought: \$250,000 Fifth claim sought: \$250,000 Sixth claim sought: \$250,000
Seventh claim sought: \$250,000

Do you want a jury trial? Yes X No _____

defendant (give the name and position held of each defendant involved in this incident) Captain Kennedy

Did the following to me (briefly state what each defendant named above did); I wrote several complaints before the incident took place on May 19, 2015 to Captain Kennedy advising him I was being harassed and threatened by Deputy Adam Geiger and that I feared for my life and requested to be relocated to another housing location due to threats and harassments my complaints were ignored which resulted in my assault upon me and injuries on May 19, 2015.

The Constitutional basis for this claim (briefly state the relief sought): ~~Fourth~~ Eighth Amendment, Failure to protect

The relief I am seeking for this claim is (briefly state the relief sought): \$250,000 for Eighth Amendment Violation Failure to protect Compensatory damages and Punitive damages

Exhaustion of Your Administrative Remedies for this Claim

Did you grieve or appeal this claim? Yes ☒ No

Did you Appeal that decision Yes ☒ No

If you did not exhaust your Administrative remedies, state why you did not do so: I was at
detention

Defendant (give the name and position held of each defendant involved in this incident)
Deputy Petralis

Did the following to me (briefly state what each defendant named above did):

Deputy Petralis came into my cell 4m C5 to intentionally assault me in doing so I was placed in a life threatening choke hold by Deputy Petralis and struck by Deputy Petralis as well and as a result I suffered severe injuries and Deputy Petralis allowed me to be assaulted by other staff members.

The constitutional basis for this claim under 42 C.S.C. § 1983 is: Eighth Amendment
Excessive force, Failure to protect

The relief I am seeking for this claim is (Briefly state the relief sought): \$250,000
Compensatory damages and Punitive damages

Exhaustion of your Administrative Remedies for this claim:

Did you grieve or appeal this claim? Yes Yes No if yes, what was the result? Facility
officials never responded back to my grievance.

Did you appeal this decision? Yes Yes No

If you did not exhaust your administrative remedies, state why you did not do so:
Due to FACILITY Not responding to my grievance

Defendant (give the name and position held of each defendant involved in this incident)
Deputy J. Geiger

Did the following to me (Briefly state what each defendant named above did):
I was housed on 4m 25 at 4:30pm or around 5:00pm I observed Deputy Geiger open my styro-wrapped tray and spit in it upon him walking to my door to serve me the tray he opened my door flap I put my arm on the flap and asked to speak to a Corpal because I witnessed him spit in my tray Deputy Geiger then shoved the tray over my arm in my flap then grabbed my arm and started bending and punching my arm on the flap while still holding my arm he removed his pepper spray from his waist belt and sprayed a liquid in my face which started to burn immediately Deputy Geiger opened my box door, which, when he walked in he started to strike me with his fists since I made it out my cell to the hallway Deputy Geiger called # Code-2 he then proceeded to strike me even after responding staff arrived and I was placed in hand cuffs which resulted in my injuries.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment, Excessive force, failure to protect

The relief I am seeking for this claim is (briefly state the relief sought): \$250,000
Compensatory damages and Punitive damages

Exhaustion of your Administrative Remedies for this claim:

Did you grieve or appeal this claim ☒ yes ☐ No if yes, what was the result? FACILITY officials never responded back to my grievance

Did you Appeal this decision ☐ yes ☒ No

If you did not exhaust your administrative remedies, state why you did not do so:
Due to FACILITY Not responding to my grievance

Did the following to me (briefly state what each defendant named above did).
Corpal. Lopez was a responding staff to the Code - 4 and upon arrival Corpal. Lopez
began to strike me and allow other staff members to strike me as well Corpal Lopez
also had direct knowledge of the staff members. Harassment against me prior to this.

The Constitutional basis for this claim under 42 U.S.C. § 1983 is: Eight Amendment
Excessive force, Failure to protect, Failure to supervise

The relief I am seeking for this claim is (Briefly state the relief sought): \$250,000
Compensatory damages and punitive damages

Exhaustion of your Administrative Remedies for this claim:

Did you grieve or appeal this claim — yes ☒ No

Did you appeal this decision — yes ☒ No

If you did not exhaust your administrative remedies, state why you did not do so:
Due to Facility not responding to other grievances I filed.

defendant (give the name and position held of each defendant involved in this incident)
Sergeant Latona

Did the following to me (Briefly state what each defendant named above did):
Sergeant Latona was a responding sergeant to the Code-1 and upon arrival
Sergeant began to strike me with other staff and allowed other staff to strike me
and also I notified Sergeant Latona prior to this incident of the Harassment and threats
by his staff members.

The Constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment
Excessive force, Failure to protect, Failure to supervise

The relief I am seeking for this claim (Briefly state the relief sought): \$250,000
Compensatory damages and Punitive damages

Exhaustion of your Administrative Remedies for this claim:

Did you grieve or appeal this claim — yes ☒ no

Did you appeal this decision — yes ☒ no

If you did not exhaust your administrative remedies, state why you did not do so:
Due to FACILITY not responding to other grievances I filed,

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4-28-16
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Signature(s) of Plaintiff(s)

